BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

For the opinion below, jurisdiction, statutes involved, summary statement of matter involved, specifications of errors, questions presented, reasons for granting the writ and prayer for writ, I respectfully refer the Honorable Court to the petition contained above.

Argument.

POINT 1.

Does the fact that, subsequently to the approval of the debtor's petition for reorganization in which all the jurisdictional facts are alleged. the trustee acquires from the conduct of the debtor's business funds sufficient to liquidate in full the claims of the secured creditors so that it then becomes unnecessary to adjust the terms of the respondent's mortgage divest the debtor petitioner of the right to proceed under Chapter X?

In order to be entitled to reorganization under the provisions of Chapter X the petition must set forth and the debtor must prove that there were mortgages on the property the terms of which are burdensome and in need of adjustment.

The debtor's petition for reorganization recited that adequate relief could not be obtained under Chapter XI because there were mortgages on the property the terms of which are burdensome and in need of adjustment. The District Court for the District of Massachusetts approved the debtor's petition on the 18th day of August, 1942. The approval of the petition determines conclusively this alle-

gation to be true. See Section 149 of the Bankruptcy Act (11 U.S.C. 1940 ed., Sec. 549), which provides:

> "An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court "

The petitioner submits that they are none the less true because by reason of subsequent developments the debtor acquires funds to liquidate the demands of the mortgagee. It can make no difference whether this new money is contributed by stockholders or is earned by the debtor in the conduct of its business or is derived from the Government in payment for the use and occupation of the hotel. The jurisdiction of the Court under Chapter X cannot be ousted by events that occurred after the filing of the petition in this case on August 5, 1942.

Point 2.

The plan of reorganization is more than a composition with general creditors which might have been presented under Chapter XI of the Bankruptcy Act, for the reason that it contemplates the payment in full of all arrears due on secured debts and provides that the continuance of the obligations be assumed by the debtor.

Point 3.

The mere fact that the plan of reorganization is no more or less than a composition with general creditors which might have been presented under Chapter XI of the Bankruptcy Act is not a reason why the Court must disapprove it.

In the case of *In re Janson Steel & Iron Co.*, 47 Fed. Supp. 652 (D.C. E.D. Pa. 1942), the plan provided that general unsecured creditors were to be paid 70 per cent of the amount of their claims. It was asserted by the objecting creditor that the plan is improper and not as contemplated by the statute under which the proceeding was filed. The District Court, in holding said contention as being without merit, said the following at page 658:

> "The mere fact that the plan of reorganization is not more or less than a composition with general creditors which might have been presented under section 12 of the Bankruptcy Act, as amended, 11 U.S.C.A. Sec. 30, is not of itself a reason why the Court must disapprove it. Every plan of reorganization involves a debtor and creditors and every reorganization is in the broad sense a composition. Downtown Inv. Ass'n vs. Boston Met. Bldgs. (C.C.A., 1st Cir), 30 Am.B.R. (N.S.) 1, 81 F. (2d) 314. . . . The test does not lie in the characteristics of the plan presented but whether it is fair and feasible. That means whether it is economically expedient, without discrimination or destruction of vested rights. In re R. L. Witters Associates (D.C.), 19 F. Supp. 648, 651."

The same principle was set forth by the Circuit Court of Appeals for the First Circuit in the case of *Downtown Investment Association* v. *Boston Metropolitan Buildings*, 81 F. (2d) 314, 323, where the Court said:

> "Reorganization plans under 77B may differ from offers in composition in form and complexity, but the difference is little more than one of degree. A plan of reorganization when accepted is nothing more than an agreement between the debtor and its creditors and

stockholders, or if the debtor has been declared insolvent, then between the several classes of creditors."

In *In re 325 East 72nd Street, Inc.*, 53 Fed. Supp. 997 (D.C. S.D. N.Y. Feb. 8, 1944), where the same question was litigated in the District Court for the Southern District of New York, subsequently to the decision of the Circuit Court of Appeals in the instant case, the Court said, by Bright, D.J.:

> "The availability of chapter X does not depend upon whether the debtor is solvent, or insolvent. It is offered to a corporation before or after bankruptcy intervenes. Sections 127, 128. The corporation may be insolvent, or unable to pay its debts as they mature. Section 130 (1). . . . The purpose of the Act was to avoid the consequence to debtors and creditors of foreclosures, liquidations and forced sales with their drastic deflationary effects. Case v. Los Angeles Lumber Products Co. 308 U. S. 106-124, 60 S. Ct. 1, 84 L. Ed. 110. The Act seeks to preserve going concern values so that they will be available for the payment of claims against the debtor and for the protection of its interests. In re Dover Boiler Works, D.C., 38 F. Supp. 701-704. The earnings, present and prospective, are a sine qua non. Consolidated Rock Products Co. v. DuBois, 312 U.S. 510-525, 61 S. Ct. 675, 85 L. Ed. 982; . . . Compromise settlements and concessions are a normal part of the reorganization process. Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co., 318 U.S. 523-542-565; 63 S. Ct. 727."

It follows, therefore, that the plan was an acceptable Chapter X plan, and that the Circuit Court of Appeals

erred in vacating the order of the District Court of October 7, 1943, and in ruling that the plan is not a Chapter X plan, in ruling that the reorganization of the debtor under Chapter X is either unnecessary or impossible, and in ruling that the plan as drafted has not been and could not be approved by the judge as an acceptable plan under Chapter X.

Respectfully submitted,

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